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Decision No. 50980 NOV 6 1979

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

EDWIN CADD,

Complainant,

vs.

ROGINA WATER COMPANY,

Defendant.

Case No. 10707
(Filed December 26, 1978)

Edwin Cadd, for himself, complainant.
Daniel D. Rogina, for himself, defendant.

O P I N I O N

This is a complaint by Edwin Cadd (complainant) against Rogina Water Company (defendant) involving the payment of refunds under the Main Extension Rule.

The complaint alleges the existence of main extension agreements covering some 20 homes: (1) that complainant has been assigned all the rights, title, and interest in said agreements; (2) that defendant has assumed obligations under these agreements; (3) that the refund under the prior year is due annually in January of the following year; (4) that defendant has not paid refunds due; (5) that complainant does not know the amount of refunds due; (6) that Main Extension Rule 15 contemplates that refunds will be made within a reasonable time; (7) that there is no precedent in commercial or financial transactions to justify withholding payment for more than a reasonable time required to compute and pay the refund; (8) that delayed payments are equivalent to involuntary interest-free loans; and (9) that refund payments under the subject contracts should be made within 10 days after December 31 of the following year.

In its answer filed February 13, 1979, defendant admits that it entered into a main extension agreement with complainant on December 31, 1958, but denies all other allegations in the complaint. As an affirmative defense defendant alleges that the agreement provides that the amount refunded shall be without interest; that all claims for interest on account of late payment for refunds due before December 29, 1974, are barred by Section 337 of the Code of Civil Procedure; and that all refunds due on the agreement have been paid.

Hearing on the matter was held May 9, 1979, at San Francisco before Administrative Law Judge Banks at which time the matter was submitted.

Defendant introduced as Exhibit 1 a statement of account of complainant. This document reviews the record of the contract from its inception to the 1978 payment. With respect to the date of payment, it shows that for several years the payment was not made the year following the collection, i.e., for 1967 payment was made in April 1970, for 1968 payment was made in October 1971, and for 1969 payment was made in July 1973. However, since 1973 payment has been made in the year following collection, with payment for the years 1975, 1976, 1977, and 1978 being made within the first four months of the following year. Complainant acknowledged the accuracy of Exhibit 1.

The issue that complainant wishes to be resolved is what constitutes a reasonable period of time in which defendant should make refunds under the main extension contract.

In Burnett v California Cities Water Company, Decision No. 83937 dated December 30, 1974, we found that April 1 was a reasonable date by which main extension contracts should be made

for the prior calendar year. We see no reason or evidence in this proceeding to alter that date.

In Buss v California Cities Water Company, Decision No. 85164 dated November 25, 1975, we found that main extension refunds not paid by April 1 of each year following collection are equivalent to involuntary interest-free loans to the utility. This principle was reaffirmed in Levine Brothers Investments v Mesa Crest Water Company, Decision No. 85949 dated June 15, 1976, and in Burnett v Park Water Company, Decision No. 87019 dated March 1, 1977. This principle applies to defendant.

Findings of Fact

1. Complainant owns, by assignment, a main extension agreement assumed by defendant.
2. Defendant does not pay main extension refunds in advance.
3. Defendant's payments of refunds under the contract have been sporadic and irregular.
4. April 1 of the year following the year of collection of revenues is a reasonable time to require payment of refunds due under main extension agreements.
5. Refunds not paid by April 1 of the year following the year of collection are equivalent to involuntary interest-free loans to defendant.
6. Interest at the rate of 7/12 percent per month on refunds not paid by April 1 of the year following the year of collection is reasonable.

Conclusions of Law

1. Defendant should be ordered to make refunds under its main extension contract by April 1 of the year following the calendar year in which revenue derived from the extension is collected.
2. Interest at the rate of 7/12 percent per month should be authorized on refunds not paid by April 1 of the year following the calendar year of collection.

O R D E R

IT IS ORDERED that:

1. When a refund is payable under the provision of defendant's Water Main Extension Rule, defendant shall make such refund in accordance with the main extension contract by April 1 of the year following the calendar year in which revenue derived from the extension is collected.

2. Interest at the rate of seven-twelfths percent per month due on the first day of each month commencing on April 1 of each year is payable by defendant on any main extension agreement refund due and not paid by April 1 of the year following the calendar year in which revenue from the extension is collected.

The effective date of this order shall be thirty days after the date hereof.

Dated NOV 6 1979, at San Francisco, California.

John E. Byron
President

George L. S. [unclear]

Robert W. [unclear]

Clare T. [unclear]

Francis M. [unclear]
Commissioners